ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Corporation and	)	
Bell Atlantic Corporation	)	CC Docket No. 98-184
	)	
for FCC Consent for	)	
Proposed Transfer of Control	)	

COMMENTS ON OR, IN THE ALTERNATIVE, PETITION TO DENY, OF TRITON PCS, INC.

Leonard J. Kennedy
David E. Mills
Laura H. Phillips

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

November 23, 1998

SUMMARY

Triton PCS, Inc. ("Triton") is a CMRS new entrant in the southeastern region of the United States. One of its primary competitors, and a dominant provider of CMRS services in many parts of Triton's service area, is Bell Atlantic's wireless affiliate, Bell Atlantic Mobile Services ("BAMS"). Because of the disturbing pattern of anticompetitive conduct BAMS recently exhibited towards Triton, and the sharp contrast between GTE's pro-competitive policy toward intercarrier roaming agreements and Bell Atlantic's anti-competitive policy, Triton urges the Commission to condition approval of the Bell Atlantic - GTE merger application on the adoption of a "best practices" requirement for intercarrier roaming agreements. If, however, the Commission declines to impose such a "best practices" requirement, the merger application should be denied as contrary to the public interest.

A "best practices" requirement for intercarrier roaming as a condition of merger is in the public interest because GTE allows its wireless affiliates to enter into "in-market" roaming agreements, whereas Bell Atlantic does not. Bell Atlantic's policy is anticompetitive because it hinders the ability of new market entrants like Triton to offer service with comprehensive coverage. Because of the dominant position a merged Bell Atlantic - GTE wireless entity would have in the southeast region, a market where PCS competition to cellular thus far has been limited, application of the anticompetitive Bell Atlantic roaming policy to GTE's service areas would unreasonably constrict the roaming choices available to CMRS carriers and would result in a loss of service to the public.

Imposing a "best practices" requirement as a condition of merger is consistent with conditions the Commission has imposed on other recent communications industry mergers to ensure that those mergers would not impair competition. For example, "best practices"

requirements were imposed on Bell Atlantic when it merged with NYNEX in 1997. In fact, both Bell Atlantic and GTE, citing competitive concerns, have been strong proponents of Commission-imposed conditions to merger on other carriers such as the MCI - WorldCom and AT&T - TCI proposed mergers. As no technical reason limits BAMS's ability to offer in-market roaming, and as GTE (and other incumbent LEC affiliates) currently makes it available to Triton, imposing a "best practices" roaming requirement as a condition of merger is pro-competitive and in the public interest.

If the Commission declines to impose a "best practices" roaming requirement, however, the Bell Atlantic - GTE merger application should be denied. The Commission has recognized in numerous proceedings that local exchange carriers have the incentive and the ability to discriminate against and behave anticompetitively towards their CMRS competitors either directly or through their CMRS affiliates. BAMS has displayed this very type of anticompetitive behavior towards its new competitor, Triton. Triton is poised to begin commercial service in early 1999 and is eager to focus its full energy on bringing service to the public in the southeast region as quickly as possible, but those energies are being diverted by BAMS's current behavior. In the past two months, BAMS has filed a frivolous lawsuit against Triton and, at the same time, behaved as though it had made a verbal commitment to execute a roaming agreement with Triton that would have included in-market areas and then abruptly announced that it had a corporate policy not to enter into any such agreements. What is especially troubling about BAMS's behavior is that Triton's subscribers in the Myrtle Beach, South Carolina RSA, a cellular system

Triton purchased last summer, will experience a reduction in their service if a Triton - BAMS roaming agreement is not reached by December 16, 1998.

Commission policy is to approve mergers only when they are in the public interest. Here, absent a "best practices" roaming requirement, CMRS competition and CMRS subscribers would be harmed if Bell Atlantic were allowed to increase its dominance in the southeast U.S. Triton urges the Commission either to require the merged Bell Atlantic - GTE to enter into in-market roaming agreements with CMRS competitors on a non-discriminatory basis or to deny the merger application as contrary to the public interest.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Corporation and	)	
Bell Atlantic Corporation	)	CC Docket No. 98-184
	)	
for FCC Consent for	)	
Proposed Transfer of Control	)	

COMMENTS ON OR, IN THE ALTERNATIVE,
PETITION TO DENY, OF TRITON PCS, INC.

Pursuant to Section 309(d) of the Communications Act of 1934, as amended, Triton PCS, Inc. ("Triton"), by its attorneys, hereby comments on the pending merger application of GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic").[1/] Triton urges the Commission to adopt, as a condition of merger, a "best practices" requirement towards the wireless applicants, specifically requiring intercarrier roaming agreements. This requirement is necessary and appropriate based upon Triton's recent experience in attempting to secure roaming agreements from Bell Atlantic and the sharp contrast between GTE's positive approach to roaming agreements and Bell Atlantic's anticompetitive approach. In the alternative, should the Commission decline to adopt a "best practices" requirement as outlined below, Triton urges the Commission to deny the proposed merger as contrary to the public interest, based upon Bell Atlantic's anticompetitive conduct toward Triton as a new competitor in the PCS market.

1/ *See* GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protection Order Filed by GTE and Bell Atlantic, *Public Notice*, CC Docket 98-184 (setting November 23, 1998 deadline for comments and petitions).

I. INTRODUCTION AND BACKGROUND

Triton is a new entrant into the commercial mobile radio services ("CMRS") marketplace. Triton was established by former executives of Horizon Cellular Group to develop and operate a leading PCS network in the southeastern United States, an area that has seen only limited PCS market entry thus far. Triton currently holds 20 MHz PCS licenses in parts of Virginia, North Carolina, South Carolina, Georgia, Tennessee, West Virginia, Kentucky, Maryland and Pennsylvania. Triton is building its PCS network and expects to begin commercial operation by the end of the first quarter of 1999. Triton has also purchased and operates existing CMRS properties such as an RSA cellular system in Myrtle Beach, South Carolina.

Triton is committed to building out its network to offer its competitive PCS service as quickly as possible. However, capital, equipment and personnel constraints make it impossible for any carrier to build out all of its markets at once. Triton has, therefore, pursued a series of roaming agreements with other CMRS carriers to ensure that Triton subscribers will have seamless service while the Triton network is under construction. These "in-market" roaming agreements are an integral part of Triton's business plan because they allow Triton to begin generating, as a new market entrant, the revenues necessary to obtain the additional financing that is so critical to rapid introduction of customer services. Roaming agreements are essential to regional players who must compete with the nationwide single-rate plans of carriers such as Bell Atlantic's wireless affiliate, Bell Atlantic Mobile Services ("BAMS"). Without comprehensive

roaming agreements, regional carriers often have holes in the coverage they can offer to their subscribers.

Triton is vitally interested in the Bell Atlantic - GTE merger application because BAMS and GTE are each the dominant provider of CMRS service in different parts of Triton's service area, and thus the combined entity and its practice in dealing with other carriers will have a substantial impact on CMRS competition.[2/] Triton's primary concern is that the merger as proposed will diminish competition in general and significantly hinder Triton's ability to provide the same level of subscriber coverage and service in the southeast region as BAMS. The Bell Atlantic - GTE merger would create significant obstacles to CMRS competition unless the adoption of GTE's policy allowing in-market roaming agreements is made a condition of merger approval as a "best practices" requirement. Bell Atlantic, the proposed survivor of this pending merger, has a stated policy against such agreements.

Moreover, BAMS has engaged in a pattern of anticompetitive conduct toward Triton with regard to roaming agreements and competition for subscribers in the southeast region. BAMS has acted to hinder Triton's ability to enter the PCS markets where Triton would compete effectively against BAMS. Specifically, BAMS recently filed a groundless lawsuit against Triton seeking to interfere with Triton's right to compete against BAMS for employees and for subscribers, and then BAMS acted as though it had made a verbal commitment to execute an in-

---

2/ Triton has standing to file these comments under Section 309(d). Section 309(d) permits "[a]ny party in interest [to] file with the Commission a petition to deny any application," where the objecting party can assert that the application's grant is "reasonably likely to result in . . . some injury of a direct, tangible or substantial nature."

market roaming agreement in critical markets and then suddenly announced that it had a corporate policy prohibiting such agreements. This disturbing pattern of anticompetitive conduct would not be so troubling if a "best practices" condition, requiring adoption of GTE's favorable roaming policy, were made a condition of the merger. Otherwise, BAMS's conduct would continue unabated, expanding into the new areas BAMS would acquire in the merger, causing substantial harm to the public interest.

Finally, and equally disturbing, if the roaming agreement issue with BAMS cannot be resolved very soon, there will be a disruption in customer service in Triton's Myrtle Beach cellular system. Triton acquired the Myrtle Beach system this summer from Vanguard Cellular Systems, Inc. ("Vanguard"), and Vanguard has been operating the system for Triton under a transition services agreement. The transition services agreement expires on December 16, and on that date the preexisting Vanguard - BAMS roaming agreement that allows their customers mutually to roam in the Myrtle Beach RSA will end. If it is not replaced by a Triton - BAMS agreement by that time, both BAMS and Triton customers will experience a disruption of service as their currently "automatic" roaming privileges will end. Triton is continuing to negotiate this roaming agreement together with the roaming agreements previously noted. BAMS, however, has attempted to bifurcate a Myrtle Beach roaming agreement from the larger issue of an in-market roaming agreement — thus preserving BAMS's subscribers' roaming privileges while leaving Triton with coverage holes in its service area.

Because Bell Atlantic's CMRS affiliate has demonstrated anticompetitive conduct, Triton requests that the Commission condition, or alternatively deny, the merger application.

II. A "BEST PRACTICES" REQUIREMENT FOR CMRS ROAMING SHOULD BE A CONDITION OF MERGER.

GTE has a pro-competitive policy allowing intercarrier in-market roaming agreements, but Bell Atlantic apparently does not. For example, Triton has roaming agreements with GTE that allows each carrier's CMRS subscribers to roam freely on the other carrier's systems without regard to whether the roaming may occur inside or outside either carrier's home market. Despite its persistent efforts, Triton has yet to sign a roaming agreement with BAMS. As described more fully below, BAMS verbally agreed to execute a roaming agreement that would cover all BAMS systems in Triton's service area without restriction, but before a written agreement could be signed, BAMS for the first time informed Triton that it has a corporate policy against allowing in-market roaming agreements. In light of BAMS's stated corporate policy against allowing in-market roaming agreements, the Bell Atlantic - GTE merger will result in a diminution of competition and customer service in the CMRS marketplace in the southeast region.

A. Imposing A "Best Practices" Roaming Requirement as a Condition of the Merger Is Within the Scope of the Commission's Authority.

The Commission has the authority to impose a "best practices" requirement on the Bell Atlantic - GTE merger because it is in the public interest and is consistent with requirements imposed as conditions in other recent mergers.[3/] Under Sections 4(i) and 303(r), the Commission has the authority to impose conditions on the approval of a transfer to ensure that the public interest is served. The Commission has routinely conditioned the grant of a transfer application

---

3/ Under a "best practices" requirement, the Commission would review the roaming practices of BAMS and GTE and impose as a condition of merger the adoption of the most pro-competitive practice.

in the context of telecommunications mergers.[4/] For instance, the Commission conditioned the Bell Atlantic - NYNEX merger on several requirements, including, but not limited to, the provision of performance monitoring reports, the provision of uniform interfaces to interconnecting carriers, and the offering of certain interconnection options and unbundled network elements to competing local exchange carriers.[5/] More recently, in the WorldCom - MCI merger decision, the Commission conditioned grant of the application on MCI's divestiture of its Internet assets to Cable & Wireless prior to the close of its merger.[6/] By imposing these conditions, the Commission sought to protect the public interest by ensuring competitive market conditions.

Bell Atlantic and GTE themselves have also been strong proponents of imposing conditions on carriers in mergers. For example, GTE vigorously opposed the WorldCom - MCI merger, claiming that it was anticompetitive.[7/] As a result of the concerns expressed by GTE and others, the Commission required MCI to divest its Internet assets. On the currently pending

---

4/ *See* Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Memorandum Opinion and Order*, CC Docket No. 97-211, FCC 98-225, rel. September 14, 1998, ¶ 10 ("*WorldCom - MCI Order*").

5/ *See* Applications of NYNEX and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, *Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286, rel. August 14, 1997, at Appendix C ("*Bell Atlantic - NYNEX Order*").

6/ *WorldCom - MCI Order*, ¶ 227.

7/ *See, e.g.*, Petition to Deny of GTE Service Corporation and its Affiliated Telecommunications Companies, CC Docket No. 97-211, filed January 5, 1998; Response of GTE Service Corporation, its Affiliated Telecommunications Companies and GTE Internetworking in Support of Petitions to Deny, CC Docket No. 97-211, filed January 26, 1998.

merger of AT&T and TCI, both GTE and Bell Atlantic have requested significant conditions, including "unbundling" cable transmission facilities from cable-provided Internet content.[8/]

Imposing a "best practices" roaming condition on the Bell Atlantic - GTE merger is consistent with Commission findings that if a pro-competitive practice is in use, the public interest is advanced by requiring that the pro-competitive practice be widely adopted.[9/] Indeed, the conditions imposed on Bell Atlantic in its merger with NYNEX were characterized by then-Chairman Reed Hundt as a "set of commitments and conditions that are drawn from the best practices of all the states in the region. . . ."[10/]

Further, the Commission has often discussed the importance of "benchmarking" local exchange carrier practices to track the progress of these carriers in implementing competition and to inform regulators of how different carriers approach different issues. In the *Bell Atlantic - NYNEX Order* the Commission identified benchmarks as an important regulatory tool, emphasizing that they were used by the Department of Justice and the Courts as well.[11/] Recently, at the Commission's *en banc* proceeding addressing mergers in the

---

8/ *See* Comments in Opposition of GTE, CC Docket 98-178, filed October 29, 1998, Reply of Bell Atlantic, CC Docket No. 98-178, filed November 13, 1998.

9/ For example, when the Commission established international settlement rates it looked at the lowest rate that U.S. carriers pay on average for traffic to any country. The Commission determined that this rate was commercially viable, and consequently established it as a "best practice" rate. *See* In the Matter of International Settlement Rates, *Report and Order,* IB Docket No. 96-261, rel August 18, 1997, ¶ 134.

10/ *See* Speech of Chairman Hundt to the National Association of Regulatory Utility Commissioners delivered November 8, 1998.

11/ *Bell Atlantic - NYNEX Order*, ¶¶ 147-49.

telecommunications industry, Chairman Kennard and Commissioners Ness and Tristani spent a significant amount of time addressing the applicability of regulatory benchmarks to incumbent carrier mergers.[12/]

B. A "Best Practices" In-Market Roaming Requirement Should Be Imposed Here Because Such Agreements Are Pro-Competitive and Commonly Used in the CMRS Market.

Bell Atlantic would be the parent corporation if the Bell Atlantic - GTE merger were approved.[13/] In the absence of a commitment otherwise, the surviving corporation would continue to follow the Bell Atlantic policy. As a result, subscribers (and competition) will be harmed.

There is no doubt that GTE's policy of allowing in-market roaming as part of overall carrier-to-carrier agreements is a more pro-competitive practice than BAMS's stated policy against allowing in-market roaming. As a condition of the merger, therefore, the new Bell Atlantic - GTE entity should be required to offer carriers roaming agreements reflecting the "best practices" as represented by GTE. Here, that would require the new Bell Atlantic - GTE entity

---

12/ *See* FCC Merger En Banc, Transcript, Thursday October 22, 1998 (Chairman Kennard stated: "[M]ergers can also have negative consequences. They may eliminate the potential for merged parties to compete one against the other. They may make it harder for other parties to enter markets dominated by one merger partner or the other. They may reduce the potential for regulatory benchmarking." Commissioner Ness stated "One concern that we've had about mergers in general is our ability to benchmark." Commissioner Tristani asked "but what do we as regulators do if we lose the benchmarks because they've been very, very useful?").

13/ *See* Application for Transfer of Control of GTE Corp., CC Docket 98-184, filed on October 2, 1998 at p. 2.

to offer GTE-type in-market roaming agreements on the same terms and conditions to all similarly situated carriers.[14/]

In-market roaming agreements are common among major CMRS competitors. For example, Triton has roaming agreements with GTE, 360° (now Alltel) and with U S Cellular that include in-market roaming. For new market entrants like Triton, in-market roaming agreements are an integral part of a carrier's business plan because they allow a carrier to offer its subscribers broader geographic coverage while market build-out is being completed. In-market roaming agreements thus support Commission policy to spur competition from new PCS providers and minimize the head-start advantage of incumbent carriers.[15/]

If a "best practices" requirement were not imposed and Bell Atlantic's policy continues after the merger, the most immediate adverse impact will be on subscribers. With in-market roaming agreements currently in place, customers of new market entrants such as Triton have seamless service. Subscribers do not particularly care whether they are using their own carrier's network or the network of some other provider — they simply want their calls to go through. Subscribers will, however, care very much if they try to place calls they are accustomed to

---

14/ The Commission has found that roaming is a telecommunications service subject to Commission Title II oversight. *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9469 (1996) ("*Roaming Order and Further Notice*").

15/ *See* Amendment of the Commission's Rules To Establish New Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4987 (1994).

making and instead of getting a dialtone are prompted to use manual roaming.[16/] Even worse, subscribers will be unable to receive calls in locations they think are part of their service areas. Frustrated customers will call their carriers, or possibly the Commission, demanding to know why their service has been impaired. Problems will also be created even in areas where carriers are not currently providing service. It will be difficult, for example, for Triton to begin marketing new service to potential subscribers in new areas if there are considerable breaks in service coverage because of lack of roaming arrangements.

The refusal of dominant carriers to offer in-market roaming will eventually result in diminution of competition.[17/] Carriers with built-out networks and broad coverage areas (*i.e.*, carriers like the merged Bell Atlantic - GTE wireless entity) will naturally seek to exploit their competitive advantage of a full coverage network in the absence of Commission action. Carriers like Triton, who are still building their networks, will lose (or be unable to attract) subscribers.

16/ Manual roaming is a form of roaming that is available when there is no pre-existing contractual relationship between a subscriber or her home system and the system on which she wants to roam. A subscriber accomplishes a manual roaming arrangement by contacting the host system and providing a valid credit card. Thus, manual roaming requires a subscriber to register with the host system while automatic roaming requires no affirmative act on behalf of the subscriber. *See Roaming Order and Further Notice*, 11 FCC Rcd at 9466.

17/ Indeed, the Commission is considering whether to adopt "automatic" roaming rules, which would permit roaming subscribers to originate or terminate a call without taking any action other than turning on the telephone. Automatic roaming requires a roaming agreement between carriers. Thus, an automatic roaming rule would require CMRS providers to enter into automatic roaming agreements on a nondiscriminatory basis. *See Roaming Order and Further Notice*, 11 FCC Rcd at 9471-9478; Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, *Public Notice*, 12 FCC Rcd 20317 (1998) (seeking additional comment on whether to adopt an automatic roaming rule).

In this case, where GTE and many other CMRS providers typically execute intercarrier arrangements that include in-market roaming, the Commission can reasonably conclude that BAMS can and should make available the same pro-competitive in-market roaming arrangement as a condition of merger. Indeed, such a requirement would be consistent with the Commission's recognition that "the availability of roaming on broadband wireless networks is important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications, and that, during the period in which broadband personal communications services (PCS) systems are being built, market forces alone may not be sufficient to cause roaming to become widely available."[18/]

The Commission has recognized that local exchange carriers and their wireless affiliates have the incentive and the ability to behave anticompetitively towards competitors and has put certain safeguards in place to protect against this anticipated anticompetitive behavior.[19/] The Commission, in keeping with its Congressional mandate under the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996, is also charged with promoting CMRS competition.[20/] The Commission should, therefore, adopt a "best practices"

18/ In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, CC Docket No. 94-54, FCC 96-284, rel August 15, 1996, ¶ 2.

19/ *See, e.g.,* In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, *Report and Order*, WT Docket No. 96-162, FCC 97-352, rel October 3, 1997 ("*CMRS Safeguards Order*").

20/ 47 U.S.C. § 332(a)(3) ("The Commission shall consider, consistent with section 1 (continued...)

roaming requirement as a condition of the Bell Atlantic - GTE merger. Absent a "best practices" requirement, the Commission runs the risk that new mega-companies like the merged Bell Atlantic - GTE entity will withdraw currently-provided arrangements and refuse to deal with new market entrants, thereby making it impossible for these carriers to begin to match the service coverage of the merged company.

III. ABSENT IMPOSITION OF A "BEST PRACTICES" REQUIREMENT FOR CMRS ROAMING, THE MERGER APPLICATION SHOULD BE DENIED.

If the Commission declines to adopt a "best practices" requirement for CMRS roaming as described above, the Commission should deny the Bell Atlantic - GTE merger application as contrary to the public interest. Bell Atlantic's BAMS affiliate is already attempting to thwart competition by exploiting its leading position in the CMRS marketplace, a position that would be strengthened by a merger with GTE.[21/] BAMS has exhibited a disturbing pattern of anticompetitive behavior designed to keep a new competitor, Triton, from entering the CMRS market in the southeast region. BAMS's anticompetitive conduct is further evidence of its resistance to open its markets to competition.[22/] Approval of the merger without appropriate

---

20/ (...continued)
of this Act, whether such action will -- encourage competition and provide services to the largest feasible number of users.")

21/ *See* Application for Transfer of Control, at p.1.

22/ The Commission has found that allegations concerning resistance to competition warrant serious consideration in the context of a merger application. *See e.g.*, Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc., *Memorandum*
(continued...)

conditions would intensify this problem, because BAMS is likely to spread its anticompetitive policies and practices to markets GTE currently serves. Accordingly, the public interest would not be served by allowing BAMS to increase its market strength in the southeast region.

Under Sections 214(a) and 310(d) of the Communications Act, as amended, the Commission must determine whether merger applicants have demonstrated that granting a transfer of control of their licenses and authorizations would serve the public interest.[23/] To determine that the proposed transfers are in the public interest, the Commission must, at a minimum, ensure that the merger does not interfere with the pro-competitive objectives of the Communications Act.[24/] According to the Commission, this analysis "necessarily includes an evaluation of the possible competitive effects of the transfer . . . ."[25/] Thus, the Commission is required to consider any anticompetitive practices that conflict with the goals of the Communications Act, including current competitive disputes.

BAMS has engaged in a pattern of anticompetitive behavior against Triton. First, BAMS filed a groundless lawsuit in New Jersey against Triton, attempting to prevent Triton from

---

22/ (...continued)
Opinion and Order, CC Docket No. 98-25, FCC 98-276, rel. October 23, 1998, ¶ 31 ("*SNET - SBC Order*").

23/ *See* 47 U.S.C. § 214(a) (stating that the Commission must find that the present or future public convenience and necessity require or will require GTE to operate the acquired telecommunications lines and that neither the present nor future public convenience and necessity will be adversely affected by the discontinue of service from Bell Atlantic); 47 U.S.C. § 310(d) (requiring the Commission to determine whether the proposed license transfer serves the public interest, convenience and necessity before it can approve the transfer).

24/ *See SNET - SBC Order*, ¶ 13; *WorldCom - MCI Order*, ¶ 9.

25/ *SNET - SBC Order*, ¶ 13.

competing effectively against BAMS for employees and subscribers in the southeast region. Second, BAMS appeared to make a verbal commitment to execute an in-market roaming agreement for certain defined markets in the southeast region, only to abruptly renege and announce that, in fact, it had a corporate policy against such agreements. The timing of these two actions and their intended consequences in the southeast market demonstrate that they are integrally intertwined as part of an effort by BAMS to hinder Triton as an effective new entrant in that market.

In its lawsuit, filed on October 16, 1998, BAMS seeks to interfere with Triton's right to employ former BAMS workers, even in the absence of non-competition agreements or any other applicable obligations.[26/] The New Jersey court has already denied on a preliminary basis the primary relief BAMS is seeking, agreeing only that any employees hired from BAMS must not violate BAMS's code of business conduct and must not disclose confidential information, which the employees and Triton had already agreed they would not do. The other relief BAMS requested, and still seeks, includes preventing Triton from hiring *any* BAMS employees for a year and restricting Triton from soliciting BAMS customers in the southeast region where Triton and BAMS will compete.

26/ Triton, as a new company, has pursued a policy of hiring the best people it can, consistent with any contractual duties such people might have to other companies. Some of the people Triton has hired have left BAMS. BAMS did not have employment contracts with those employees (they were employees at will), and the employees were covered only by the BAMS "Code of Conduct" that forbids BAMS employees from using confidential BAMS information outside of the company.

With regard to the roaming agreement, as the attached declaration of Triton Intercarrier Relations Director Drew Davies describes, during the week of October 12, 1998 (just before the lawsuit was filed), BAMS representatives told Triton representatives that BAMS would execute a roaming agreement that covered all BAMS CMRS properties in the Triton service area without restriction.[27/] The agreement would have included "in-market" roaming in Greenville, Columbia, Anderson, and Hickory. The BAMS representative was to prepare the written contracts and forward them to Triton by October 20.

The contracts, however, never arrived. In fact, when Mr. Davies finally reached BAMS on October 23, 1998, less than a week after BAMS filed the New Jersey lawsuit against Triton, BAMS suddenly announced that the in-market roaming agreement with Triton was not approved. Even though BAMS had been actively negotiating and then apparently approved the in-market roaming agreement with Triton the previous week, BAMS revealed for the first time that it had a corporate policy of not allowing in-market roaming agreements. This policy sets BAMS apart from other CMRS providers like GTE, 360°, and U S Cellular in the southeast region in that BAMS is evidently acting against its own economic self-interest by refusing to enter into in-market roaming agreements.[28/]

27/ *See* Declaration of Drew Davies (attached as Exhibit A).

28/ If BAMS had accepted the Triton proposal it would have enjoyed the increased revenue that Triton would have provided as a new carrier with customers roaming on the BAMS systems. The Triton proposal also would have lowered BAMS's roaming charges in the Myrtle Beach, South Carolina RSA from the previous $0.45 per minute to $0.20 per minute — a drop of over 50 percent. BAMS's behavior thus can only be viewed as anticompetitive because it is, at the very least, economically irrational.

BAMS never explained how the negotiation of the Triton roaming agreement could have progressed in good faith if BAMS had a policy against in-market roaming. Further, since October 23, as Mr. Davies describes in his Declaration, BAMS's characterization of its roaming agreement policy has inexplicably shifted several more times, and it appears that perhaps BAMS is not interested in negotiating a roaming agreement in good faith. Indeed, from a technical engineering perspective, if BAMS will not enter into an in-market roaming agreement with Triton, the prior negotiations become moot because Triton will be unable to roam on most, if not all, of the BAMS systems in North and South Carolina.

Lawsuits and difficult contract negotiations are facts of business life. Nonetheless, it is disturbing that Triton was told that BAMS would execute a specific roaming agreement with BAMS until the very week the BAMS employee lawsuit was filed. Triton was told the roaming agreement was approved by BAMS management the week of October 12 and somehow became unapproved less than a week later, right after the lawsuit was filed on October 16. In an attempt to keep Triton from successfully entering the southeast region CMRS market, BAMS acted as though it would execute a roaming agreement and then scuttled any chance of such an agreement, while at the same time filing a groundless lawsuit.

As a new company, Triton must focus its energies on entering the increasingly competitive CMRS market. BAMS, an affiliate of Bell Atlantic, is attempting to thwart Triton's efforts. Filing a groundless lawsuit specifically designed to prevent effective hiring and competition, and then negotiating but refusing to execute a roaming agreement that would have allowed Triton to compete on equal footing with BAMS, shows a pattern of anticompetitive

conduct toward a new entrant in the southeast region. Such behavior is, in fact, the very sort of anticompetitive behavior by a LEC affiliate the Commission has found troubling in the past when local exchange carriers took advantage of their market power.[29/] As the Commission has recognized, "[w]ith increased competition in the CMRS marketplace, the incentive for anticompetitive behaviors, particularly . . . against CMRS competitors, . . . may well increase."[30/] Anticompetitive behavior is vividly in evidence here.

IV. CONCLUSION

Conditioning the Bell Atlantic - GTE merger on a "best practices" roaming requirement is pro-competitive and pro-consumer and should be adopted regardless of the outcome of the pending disputes between Triton and BAMS. Triton will report to the Commission any progress (or lack thereof) as these matters continue. If, however, BAMS maintains its anticompetitive posture against Triton, Triton believes that the Bell Atlantic - GTE merger should not be approved. BAMS's anticompetitive behavior should not be rewarded by providing BAMS additional opportunities to take unreasonable actions to hinder or eliminate competition. Absent

---

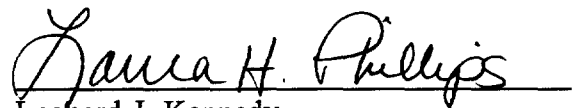
29/ *See, e.g., CMRS Safeguards Order.*

30/ *Id.* at ¶ 53.

adoption of the "best practices" roaming requirement described above, therefore, the Bell Atlantic - GTE merger application should be denied.

Respectfully submitted,

TRITON PCS, INC.



Leonard J. Kennedy
David E. Mills
Laura H. Phillips

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

November 23, 1998

EXHIBIT A
DECLARATION OF DREW DAVIES

I, Drew Davies, do hereby declare:

1. I am the Director of Intercarrier Services for Triton PCS, Inc. ("Triton PCS") and have held that position since August of 1998.

2. Triton PCS has a roaming agreement with GTE's CMRS affiliates that permit both carriers to roam on each other's CMRS systems without regard to whether the roaming is in-market or out-of-market. Triton has similar roaming agreements with 360° and U S Cellular.

3. Triton PCS owns a cellular system in Myrtle Beach, South Carolina that is currently managed by Vanguard Cellular Systems, Inc. ("Vanguard"). The management agreement with Vanguard ends on December 16. When the agreement ends, the system will no longer be covered by the roaming agreement between Vanguard and Bell Atlantic Corporation's wireless affiliate, Bell Atlantic Mobile Services ("BAMS"). If Triton and BAMS do not reach a roaming agreement of their own by December 16, subscribers in the Myrtle Beach, South Carolina area will experience a loss of service due to restricted coverage areas.

4. In late September 1998, Triton PCS approached BAMS regarding the possibility of entering into a roaming agreement between BAMS and Triton PCS. On September 30, 1998, the Triton PCS Intercarrier Services Department mailed a copy of an Intercarrier Roamer Service Agreement ("IRSA") for Triton PCS to the Bell Atlantic Mobile Roaming Administration Department in Bedminster, New Jersey. Documents included with the IRSA were a Technical Data Sheet and map of the Triton PCS coverage area.

5. On Friday, October 2, 1998, I spoke to Ed Boureis, the Staff Director for Intercarrier Services for BAMS, regarding specifics of a potential roaming agreement between Triton PCS and BAMS. During that conversation I provided a detailed description of the markets

in which Triton PCS and its affiliate Triton Cellular owned systems. Mr. Boureis told me he was interested in discussing Triton PCS' purchase of a wireless system in Myrtle Beach. I proposed specific rates for airtime and domestic toll for the PCS markets, which Mr. Boureis told me were in line with their desire for low rates. Mr. Boureis told me that he would "run the numbers" to see what type of roaming traffic our properties currently represented. Mr. Boureis and I agreed to aim for a November 16, 1998 implementation date.

6. During the week of October 12, 1998, Mr. Boureis called to inform me that BAMS management had approved the roaming agreement at the rates I had proposed during our earlier conversation for both Triton PCS and Triton Cellular. Mr. Boureis confirmed that these rates would apply to both A side and B side cellular properties and that there would be no restrictions. Mr. Boureis agreed to draft two IRSAs -- one for Triton PCS and one for our Triton Cellular and to send them to me in time for me to have them signed by one of our corporate executives when I visited our corporate offices on October 20th.

7. After failing to receive the IRSAs on the promised date, I called Ed Boureis several times, finally reaching him on Friday, October 23, 1998. Mr. Boureis informed me that BAMS was still working on an attachment to the PCS IRSA that listed the markets and rates and that, although it was a standard document, it was being held up in their legal department. Mr. Boureis also told me for the first time that an impediment to having the IRSA approved was a BAMS corporate policy of not allowing in-market roaming. Having already reached an agreement on the material terms of the IRSA during our October 12, 1998 conversation, I was surprised and told Mr. Boureis that I was not aware of this policy and that no one at BAMS had ever mentioned it before. Mr. Boureis told me that they would try to convince their CFO, Dave Benson, to approve the agreement with Triton despite the fact that it

permitted in-market roaming. If BAMS prohibits in-market roaming, the technical configuration of the BAMS system precludes Triton from roaming on most, if not all, BAMS systems in North or South Carolina.

8. On October 28, 1998, I called Mr. Boureis again. He told me that the IRSA still was not approved. In hopes of meeting the November 16th target date that we had agreed upon earlier, I suggested a reduction in the airtime rates for Myrtle Beach as a financial incentive favorable to BAMS to ensure that there would be no restrictions with in-market roaming.

9. On October 30, 1998, I called Mr. Boureis again to find out if BAMS had reached a decision. He told me that BAMS still did not want to allow in-market roaming in Greenville and Columbia, South Carolina because BAMS did not want to allow "in-MSA" roaming. Mr. Boureis said that because Anderson and Hickory, South Carolina were not MSAs, there would not be a problem in allowing in-market roaming in those areas.

10. On November 6, 1998, Mr. Boureis informed me that their lawyers had approved the agreement with Triton PCS without any roaming restrictions and that it was now up to the President of their Southeast Region, Jerry Fountain, and Mr. Benson to approve the agreement. Mr. Boureis told me that it was now a "business" decision.

11. On November 16, 1998, Mr. Boureis and Michael Burns, Director of Intercarrier Services for BAMS, called to inform me that BAMS now had decided that it would not agree to allow in-market roaming in Hickory,

Anderson, Columbia, or Greenville. This reversed BAMS' previous position that Hickory and Anderson did not present problems with its "no in-market roaming" policy because they were not MSAs.

12. On November 17, 1998, I spoke with Mr. Boureis and asked why BAMS had changed its initial position allowing in-market roaming in Anderson and Hickory. Mr. Boureis said that he did not know -- the change had come as a surprise to him as well. However, Mr. Boureis also said that upper management was now reconsidering, and that they hopefully would have a decision by 5:30 p.m. EST that day.

13. On November, 18, 1998, Mr. Boureis and Mr. Burns called again, stating that upper management now had confirmed that in-market roaming would not be allowed in any of Triton's markets. Mr. Boureis suggested that they now intended to investigate technical issues that might minimize the impact of their policy against in-market roaming, but that it would not be until Thanksgiving week that further information could be expected.

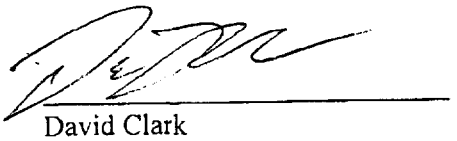
I declare under penalty of perjury that the foregoing is true and correct.

Drew Davies
Director of Intercarrier Services

Executed on November 21, 1998

EXHIBIT B
DECLARATION OF DAVID CLARK

I, David Clark, declare under penalty of perjury under the laws of the United States, that I am Senior Vice President and CFO of Triton PCS, Inc., that I have read the foregoing "COMMENTS ON OR, IN THE ALTERNATIVE, PETITION TO DENY, OF TRITON PCS, INC.;" and that, with the exception of the facts of which the Commission may take official notice or that are otherwise encompassed by the Declaration of Drew Davies, all facts stated in the Petition are true, of my own personal knowledge.



David Clark
Senior Vice President and CFO

Dated: November 23, 1998

SERVICE LIST

I, Constance Randolph, a legal secretary for Dow, Lohnes & Albertson, PLLC hereby certify that on this 23rd day of November, 1998, I served by first-class United States Mail, postage prepaid, or via hand delivery, a true copy of the foregoing **COMMENTS ON OR, IN THE ALTERNATIVE, PETITION TO DENY, OF TRITON PCS, INC.**, upon the following:

*The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

*The Honorable Michael Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Ari Fitzgerald, Esq.
Office of Chairman
William E. Kennard
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

*Daniel Phythyon, Chief
Wireless Telecommunications Commission
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

*International Transcription Service
1231 20th Street, NW
Washington, DC 20036
(1 copy)

*Carol Mattey, Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Rm. 544
Washington, DC 20554
(2 copies)

*Regina Keeney, Chief
International Bureau
Federal Communications Commission
2000 M Street, NW, Rm. 800
Washington, DC 20554
(2 copies)

* Jeanine Poltronieri,
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Rm. 5002
Washington, D.C. 20554
(1 copy)

*Steve Weingarten, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, NW, Rm. 7023
Washington, DC 20554
(1 copy)

*Cecilia Stephens
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Rm. 544
Washington, DC 20554
(3.5 inch diskette with cover letter)

William P. Barr
Executive VP - Government and Regulatory
Advocacy and General Counsel
GTE Corporation
One Stamford Forum
Stamford, CT 06904
(1 copy)

James R. Young
Executive VP - General Counsel
Bell Atlantic Corporation
1095 Avenue of the Americas
New York, NY 10036
(1 copy)

Constance A. Randolph